IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 1232 of 1986
Date of decision: March 14, 2007

Karnail Singh and another ...Petitioners

Versus

State of Haryana and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL

Present: Mr. LN Verma, Advocate,
for the petitioners.

Mr. Ashish Kapoor, Additional Advocate General,
Haryana.

Mr. Sandeep Punchhi, Advocate.

K.S.GAREWAL, J.

This petition was filed by Karnail Singh and his mother Panjab Kaur. During the pendency of this petition Karnail Singh died, his legal representatives are on record.

The petitioners have raised an interesting point to seek the benefit available under the definition of “family” given in Section 3 (f) of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the Act) and the permissible area being increased for each separate unit, as defined in Section 3 (q) of the Act.

Karnail Singh had land in three villages. His total holding measured 485 kanals 13 marlas. Karnail Singh's mother Panjab Kaur held

59 kanals 17 marlas. According to the petitioners, Karnail Singh lived with his mother and they had a common kitchen. For some reason, Panjab Kaur was unable to submit a declaration form on time under the provisions of the Act. However, Karnail Singh submitted his declaration on August 9, 1976. It was processed but when it came to light that a declaration should also have been submitted by Panjab Kaur, the declaration was amended through an application filed by Panjab Kaur on October 20, 1978 supported by an affidavit (the amendment application and the affidavit are annexed as Annexures P/1 and P/2 respectively). However, when the proceedings were taken up, the Prescribed Authority considered only Karnail Singh's holding and took into account his family consisting of himself, his wife and four children. Therefore, Karnail Singh's permissible area was determined on the basis of a primary unit with one additional unit.

The order of the Prescribed Authority dated October 15, 1980 (Annexure P/3) was challenged before the Collector, Sirsa. In appeal, Karnail Singh took the plea that his mother Panjab Kaur lived with him. Therefore, she was also entitled to a primary unit as head of the family. In addition to this, a separate unit had to be given to Karnail Singh. Therefore, the landowners did not possess any surplus area and their holding was within permissible limit. The Collector on February 16, 1981 (Annexure P/5) rejected this plea as there was no proof that Panjab Kaur lived with her son or that she held any land on January 24, 1971.

The revision filed by the petitioners was dismissed in limine by the Commissioner, Hisar Division, on October 28, 1982 (Annexure P/7). They went in further revision before the Financial Commissioner which too was dismissed on September 16, 1985 (Annexure P/9).

The findings of the learned Financial Commissioner were as under:-

> "...The only issue involved in this case is as to whether Shri Karnail Singh the petitioner was living with his mother Smt. Panjab Kaur at the time that he filed form 'C' for the declaration of his permissible area and hence entitled to additional benefit under the Haryana Ceiling on Land Holdings Act, 1972. I find that the Asstt. Collector Ist Grade and Collector, Sirsa have both gone into this question in detail and come to the conclusion that the petitioner has been unable to prove the fact of his joint residence with his widowed mother. A copy of the Jamabandi that the petitioner had filed for the year 1968-69 also shows him to be an exclusive owner of the land. In view of this it appears that he was holding the land for which he has filed form 'C' exclusively. As far as the question of any presumption arising under Section 3 (q) explanation that an adult son will be deemed to be living with his parents unless separated is concerned, the revenue record should support this contention of joint residence and joint ownership..."

The learned counsel has contended that as a matter of fact Panjab Kaur did own land. She had half share in land measuring 119 kanals 15 marlas. Thus, her share came to be 59 kanals 17 marlas.

According to the learned counsel for the petitioners, Panjab Kaur was a widow who lived with her son, therefore, Panjab Kaur and Karnail Singh constituted a family and Punjab Kaur's adult son constituted a separate unit.

The State of Haryana filed written statement and defended the orders of the revenue officers by pleading that Karnail Singh and his two brothers had inherited land directly from their grand father Ajmer Singh as their father Jaggar Singh had predeceased their grand father. All this happened in 1956. On January 24, 1971, the appointed day under the Act, Karnail Singh owned 485 kanal 13 marla of land. Karnail Singh claimed that Panjab Kaur lived with him whereas he had two brothers Jangir Singh and Sarban Singh. Panjab Kaur could be living with any one of her three sons. It was not established from the record that she lived with Karnail Singh. It was Karnail Singh who suppressed the fact that he had two brothers. The stand of the petitioner that he was living with his mother or his mother was living with him was an afterthought.

An obvious mistake had been committed by the petitioners by failing to file a declaration disclosing that Panjab Kaur owned half share of 119 kanal 15 marla and that she was included in the definition of “family”. If Panjab Kaur's holding of 59 kanals 15 marlas was added to Karnail Singh's holding of 485 kanals 13 marlas and they constituted a family unit, then as adult son, Karnail Singh would be entitled to a separate unit. It is true that to get the benefit of a separate unit the adult son should be living with his parents or either of them. Panjab Kaur is a widow who must be living with either Karnail Singh or any of his brothers. It is only Karnail Singh who is claiming the benefit of a separate unit. None of his brothers have made such a claim. It would be unconceivable that Panjab Kaur's holding would be added to the holdings of all her three sons and each of them thereby claiming a separate unit. It has not been shown that the benefit which Karnail Singh is claiming had also been claimed by his

brothers, Jangir Singh and Sarban Singh. Therefore, it is presumed that Panjab Kaur and Karnail Singh lived together, either the son lived with his widowed mother, or the widow lived with her son is immaterial. They both constituted a family unit and the primary unit of the family would the holding of Panjab Kaur and Karnail Singh taken together. In this event Karnail Singh as the adult son would be entitled to a separate unit, since his widowed mother lived with him. The case is fully covered by the provisions of the Haryana Ceiling on Land Holdings Act, 1972, which provides a separate unit for an adult son.

In the circumstances, this petition deserves to be allowed. Consequently, impugned orders Annexure P/3 dated October 15, 1980, Annexure P/5 dated February 16, 1981, Annexure P/7 dated October 28, 1982 and the ultimate order of the Financial Commissioner dated September 16, 1985 (Annexure P/9) are hereby quashed. The matter is remanded back to the Prescribed Authority, Sirsa. The permissible area in relation to the family consisting of Panjab Kaur and her son Karnail Singh shall be taken as the primary unit of the family and shall be re-determined by giving the benefit of a separate unit to Karnail Singh (deceased), now represented through his legal representatives.

The proceedings shall be concluded by the Prescribed Authority Sirsa, within three month after the receipt of a certified copy of this order.

March 14, 2007 **(K.S.GAREWAL)**
prem **JUDGE**